

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13, 795

IN RE CONSERVATORSHIP OF THEODORE A. MATTHEWS,
ADULT WARD

BERNICE M. GORDON
and
PHILLIP MATTHEWS

729

Appellants

v.

GLADYS LLOYD MATTHEWS,
CONSERVATOR

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

MAY 17 1957

Joseph W. Stewart

CLERK

(i)

QUESTIONS PRESENTED

1. Where a verified petition was filed alleging that a guardian under the conservatorship statute had married her ward during the conservatorship, did the Court err in granting a motion to dismiss the petition without the production of evidence?

2. Did the Court err in summarily concluding without evidence that the ward of the Court was competent to marry?

3. Did the guardian satisfy the quantum of proof required to rebut the presumption of fraud by producing a doctor's certificate stating the ward was orientated?

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UNITED STATES COURT OF APPEALS
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BERNICE M. GORDON
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Appellants

v.

GLADYS LLOYD MATTHEWS,
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Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, Section 1291, United States Code, to review the action of the District Court in this proceeding. The Court below granted appellees' (defendants') motion to dismiss the petition with prejudice and entered a final order, from which this appeal is taken.

STATEMENT OF THE CASE

On April 20, 1956 the U.S. District Court for the District of Columbia issued an Order appointing Gladys Lloyd conservator of the estate of Theodore A. Matthews, ward, because of the ward's inability to properly manage his affairs and care for himself, and thereafter the said Gladys Lloyd qualified by giving bond in the sum of \$100,000.00 for the faithful performance of her trust. The approximate value of real estate of the ward is in excess of \$50,000.00 and personalty approximately \$100,000.00.

The record will show that the ward was about 65 years old and the conservator about 45 years old. Also, that the conservator represented that she was a married person living separate and apart from her husband. That Dr. Robert H. Groh, a psychiatrist, filed with the Court through the Guardian Ad Litem, a report which reads in part:

"It is my opinion that Mr. Matthews is of unsound mind due to cerebral vascular disease. He had a profound stroke affecting the entire left side of his jaw. He is disorientated and confused. He is unable, in my opinion, to exercise appropriate and proper judgment in his own behalf and welfare. There is a serious doubt in my mind that the future holds much hope of improvement and that he would ever be able to exercise reasonable judgment in his own behalf."

About five months later, to wit: on September 28, 1956, the conservator procured a license to marry the ward. The petitioners, upon their discovery of the proposed marriage, applied to the District Court for and were granted a temporary restraining order. However, it later appeared that the marriage was consummated on October 2, 1956 and the temporary restraining order being dated October 5, 1956 was voluntarily dismissed, the question apparently being moot.

Whereupon, the appellants filed a petition with the lower Court for the removal of the conservator for mandatory injunction, accounting and other relief. The basis of the petition in substance was:

1. That the alleged marriage between fiduciary and ward was a breach of the fiduciary relationship.
2. The ward was incompetent to marry.
3. Conservator had committed waste.

The ward filed a motion to dismiss the petition raising questions of fact concerning the right of the appellants to maintain the action, alleging as a fact that she had done no act to warrant her removal and attached thereto the affidavit of one Dr. Donald McHarper which stated in substance that the ward was then quite orientated and had gained weight. The guardian also filed a verified answer.

The matter came on for hearing upon the motion to dismiss and it was heard upon the oral argument of counsel without the presentation of any evidence whatsoever. The Court took the matter under advisement and subsequently granted the motion to dismiss and a final order was entered dismissing the petition with prejudice. The Court referred counsel's attention to the cases of Bradford v. Parker, 99 N. E. 537, and Roether v. Roether, 191 N. W. 576.

It was shown by the appellants that at the time of the filing of the petition the only surviving relatives of the ward were Samuel Matthews, brother of the ward, Bernice M. Gordon, niece of ward and daughter of Samuel Matthews, and Phillip Matthews, nephew of the ward and son of Samuel Matthews. Bernice M. Gordon and Phillip Matthews were the petitioners below and the appellants herein because the said Samuel Matthews was physically incompetent to manage his own affairs and to protect the interest of his brother, and subsequent to the filing of the petition, Phillip Matthews was appointed conservator of the estate of his father, Samuel Matthews.

POINTS RAISED ON THIS APPEAL

The Court below erred as follows:

1. In summarily dismissing the petition with prejudice without the production of evidence.
2. And for other errors which may be apparent from the record or come to the attention of the Appellate Court.

STATUTES INVOLVED

1. 65 Stat. 608, Public Law 196, Ch. 545, October 24, 1951, Section 21-501 of the District of Columbia Code, 1951 Ed.

"If an adult person residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness (not amounting to unsoundness of mind), or physical incapacity properly to care for his property, the United States District Court for the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint some fit person to be conservator of his property."

2. Title 21, Section 503, District of Columbia Code, 1951 Edition, the pertinent part being the last clause which reads:

". . . and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of such person as for guardians of estates of infants."

3. Title 21, Section 507, District of Columbia Code, 1951 Edition states:

"Lis pendens: Upon the filing of a petition under this chapter, a certified copy of such petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator be appointed on such petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after such filing and before the termination of the conservatorship shall be void."

4. Title 30, Section 103, District of Columbia Code, 1951

Edition states:

"The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be eighteen years of age for females.

SUMMARY OF ARGUMENT

Legal history has shown that in no relationship, except perhaps parent and child or husband and wife, are the elements of confidence on one side and act of good faith on the other more essential than in the relationship of guardian and ward. Guardianship is a trust of the highest and most sacred character, and the trustee cannot be allowed by law to have any inducement to neglect the ward's interest.

Any transaction between guardian and ward, or by the guardian alone, through which the guardian obtains a benefit, entered into while the relationship exists, is in the highest degree suspicious; the presumption against them is so strong that it is hardly possible for them to be sustained.

Transactions between the guardian and ward are not void, but when such transactions occur and it is a benefit to the guardian, it is the duty of the Court to examine such transaction with a very suspicious

eye, and the burden is upon the guardian to prove by clear and convincing evidence, good faith in the absence of influence, of knowledge, and that the ward's act was an act of his own volition and was with the fullest deliberation.

ARGUMENT

There are before this Court three major questions: the first being whether the ward was competent to marry; the second question being whether the lower Court was required to examine the transaction between guardian and ward and determine whether the act was the product of free volition of the ward; and the third being whether the quantum of proof required by the circumstances was satisfied by the affidavit of a physician.

I

THE WARD WAS INCOMPETENT TO MARRY

Title 21, Section 507, District of Columbia Code, 1951 Edition, provides that all contracts of the ward are void, except those for necessities. This is clearly an indication that the ward is barred by statute from entering into a contract of marriage through the assistance of a conservatorship. Likewise, Title 30, Section 103 of the District of Columbia Code, 1951 Edition, makes voidable any relation where "either of the parties to which shall be incapable from physical causes of entering into the marriage state."

II

THE LOWER COURT WAS REQUIRED TO JEALOUSLY
AND SUSPICIOUSLY EXAMINE THIS TRANSACTION
BETWEEN THE FIDUCIARY AND THE WARD

The relationship of guardian and ward creates a sacred trust, and any transaction between the parties whereby the guardian derives a benefit should be examined by the Court with a jealous and suspicious eye.

The Act for the appointment of conservators to conserve the assets and provide for the personal welfare of persons of advanced age, mental weakness, not amounting to unsoundness of mind, or physical incapacity, was passed by Congress, October 24, 1951, and is cited as 65 Statute 608, Public Law 196, Ch. 545, October 24, 1951, and is found in Section 21-501 of the District of Columbia Code, 1951 Edition.

The purpose of the Act is as stated in its subject heading. The Senate's report No. 171 of the 82nd Congress, 1st Session, considering Senate 11, as found in Serial No. 11486 of Senate Reports - Volume 1, states the purpose of the bill is to allow the Federal District Court for the District of Columbia to appoint conservators of the estate of the person who is incompetent by reason of advanced age, mental weakness, or physical incapacity, to properly care for their property. House Report No. 631 and Conference Report No. 1026 corroborate the said purpose of the Act.

Section 4 of the Act states in part as follows: "The Court shall have the same powers with respect to the property of any person for whom a conservator has been appointed as it has with respect to the property of infants under guardianship." Under the Act, therefore, it is apparent that the law applicable to guardian and ward is applicable to conservator and ward under this statute. See In re: Searle, 118 F Supp. 273 (1953) D. C. D. C.

Legal history has shown that in no relation, except perhaps parent and child, or husband and wife, are the elements of confidence on one side and active good faith on the other more essential than in the relationship of guardian and ward. Guardianship is a trust of the highest and most sacred character, and the trustee cannot be allowed by law to have any inducement to neglect his ward's interests. See Brandon v. Greer, 95 Miss. 100, 48 So. 519. The confidential relation immediately arises between a person appointed guardian and his ward, for the benefit of his ward. See U. S. F. & G. CO. v. Citizens State Bank, 36 N. D. 16, 161 N. W. 562. It is this type of relation that the conservator statute has created for the conservator and his ward.

Contracts between guardian and ward have been held void from time immemorial. See Daniels v. Tolson, 53 Okla. 666, 157 P. 756, where the Court quoted 2 Pomeroy's Equitable Jurisprudence Section 961 in holding:

"The equitable rules concerning dealings between guardian and ward are very stringent. The relationship is so intimate, the dependence so complete, the influence so great, that any transactions between the two parties, or by the guardian alone, through which the guardian obtains a benefit, entered into while the relationship exists, are in the highest degree suspicious; the presumption against them is so strong that it is hardly possible for them to be sustained."

III

THE CASES REFERRED TO BY THE LOWER COURT ARE NOT IN POINT

The Court, in arriving at its decision to dismiss the Petition, considered and referred counsel's attention to the case of Bradford v. Parker, 99 N. E. 537, which case in no wise determines the issues raised in the instant case.

In the case of Bradford v. Parker, supra, the Petitioner and decedent were married on June 29, 1947. Decedent had been continuously under conservatorship from April 3, 1947. It was contended by the sisters of the decedent that a person under conservatorship could not enter into a valid marriage. That contention was based on the decision of Middleborough v. Inhabitants of Rochester, 12 Mass. 363, wherein it was held that "one void of understanding so as to be incapable of making a valid contract could not contract a marriage valid for any purpose. The case of Bradford v. Parker held that the mere fact of conservatorship does not require any finding of mental incompetence, the determining factor is the mental competence of the ward at the time of the marriage. Bradford v. Parker is clearly distinguishable from the instant case, in that in Bradford v. Parker, there was no marriage between the conservator and the ward, but merely an assertion of the survivors of the ward that because of conservatorship per se the ward was incompetent to marry. However, in the instant case, the marriage was between the ward and the conservator at a time when the ward was physically and mentally incompetent, which the appellants were prepared to prove but were precluded from so doing by the lower Court summarily granting the appellee's motion to dismiss the petition. The Court also considered the case of Roether v. Roether, 191 N.W. 576. In this case, the wife of the incompetent brought an action against the incompetent and his conservator to confirm her marriage.

The Court addressed itself to the question of whether at the time of the marriage the incompetent had the capacity to enter into a marital contract. The statute of Wisconsin provided that all contracts of the incompetent were void. The Court held that this was not applicable to a marital contract and that the statute addressed itself to civil contracts and that marital contracts differed from civil

contracts in that it created a status in society. This case is distinguishable from the case under consideration in that in the Roether case there was a three-party situation: an incompetent, the conservator, and the wife. Here the wife is also the conservator, charged with conserving the estate of the incompetent, and exercising such a tremendous influence over him in direction of his affairs, and entertaining such a knowledge of his affairs that she was in a position to take an unwarranted advantage of her fiduciary relationship.

The Court should also note that under ordinary circumstances, the fiduciary should be available to counsel the incompetent. But obviously, where there is such a patent conflict of interest, it was impossible for her to objectively counsel the incompetent.

In the instant case, it was the contention of the appellants that the conservator was incompetent to contract for herself and for her ward, particularly where the Court has imposed upon her the extraordinary responsibility of protecting the interests of the ward, and where as a result of the contract, the conservator would derive specific benefits. This contention is well founded in the light of the Code, Title 21, Section 507, which precludes a ward from entering contracts on his own behalf after a conservator has been appointed.

IV.

**THE DEFENDANT DID NOT SATISFY THE QUANTUM OF
PROOF REQUIRED BY THE CIRCUMSTANCES AND THE
LOWER COURT THEREBY ERRED IN GRANTING THE
MOTION TO DISMISS**

The validity or invalidity of the marriage is not the primary question. The primary question is the breach of fiduciary relationship as grounds for the removal from office of conservator. Applying the law

applicable to guardian and ward, there can be no question of the existence of sufficient grounds to effect the removal of the conservator. In any event, an affidavit by a physician, regardless of how complete, could not possibly serve as a substitute for the opinion of the Court in deciding that the guardian had overcome the strong presumption of fraud, and that the act was the product of the free volition of the ward.

In the case of Garvin v. Williams, 44 Mo. 465, 100 Am. Dec. 314, at Page 318, the Court in citing Hatch v. Hatch, 9 Ves. 292, in referring to a transaction between guardian and ward after the ward had reached its majority, held: "In discussing whether it is an act of rational consideration, - an act of pure volition, uninfluenced, - that inquiry is so seriously baffled in a Court of justice that instead of a spontaneous act of a friend uninfluenced, it may be the influence of a mind misled by undue kindness, or forced by oppression, and therefore, if the Court does not watch these transactions with a jealousy almost invincible, in a great majority of cases it will lend its assistance to fraud." In the case of McParland v. Larkin, 39 N.E. 609, at page 611, the Court said: "It is not necessary in such cases that actual and intentional fraud be established. It is sufficient, when the parties sustained the relation of guardian and ward, that the former has gained some advantage by the transaction with the ward, to throw the burden of proving good faith and absence of influence, and of knowledge and free consent of the ward, upon the guardian.

In the case of Meek v. Perry, 36 Miss. 190, the testatrix upon five months after reaching her majority, being in low health, made her Will leaving her property to her former guardian. The Supreme Court of Mississippi set the Will aside and said:

"In transactions between guardian and ward, the law, upon principle of public policy, and to protect the ward against the efforts of overweening confidence and self-delusion, and the infirmities of a hasty precipitate judgment, presumed the existence of undue

influence on the part of the guardian, and therefore, such dealings were prima facie void, and would be so held unless the guardian showed, by the clearest proof that he dealt with the ward exactly like a stranger, taking no advantage of his influence over him, or his superior knowledge of the transaction, in that the ward's act was the result of his own volition and upon the fullest deliberation." [Emphasis supplied]

CONCLUSION

It is manifestly apparent that a transaction between guardian and ward whereby the guardian derives a benefit, can only be sustained when the guardian is able to overcome the presumption of fraud and duress by the production of clear and convincing evidence that the act was the free volition of the ward and that the fiduciary gained no advantage whatsoever by virtue of his office.

In the instant case, the lower Court, by summarily dismissing the petition, apparently presumed the absence of fraud, coercion and duress, and the presence of good faith, understanding, knowledge, deliberation and free volition, all contrary to the overwhelming weight of authority.

For the reasons hereinbefore set forth, it is respectfully submitted that the action taken by the Court below should be reversed.

Respectfully submitted,

CARLISLE E. PRATT
VERGINALD L. DOLPHIN

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Washington, D.C.

Attorneys for Appellants

(i)

JOINT APPENDIX

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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1 [Filed November 8, 1956]

In Re:	)	CIVIL ACTION NO. 1107-56
CONSERVATORSHIP OF,	)	
THEODORE A. MATTHEWS	)	
ADULT WARD	)	

PETITION FOR REMOVAL OF CONSERVATOR, FOR MAN-
DATORY INJUNCTION, ACCOUNTING AND OTHER RELIEF

The petition of Bernice M. Gordon and Phillip M. Matthews respectively represent to the Court as follows:

1. That the petitioners are niece and nephew of Theodore A. Matthews, Ward herein.

2. That on the 20th day of April, 1956, this Court passed an Order appointing Gladys Lloyd conservator of the estate of Theodore A. Matthews, Ward, because of the Ward's mental weakness and physical incapacity to properly manage his affairs and care for himself. That thereafter the said Gladys Lloyd qualified by giving a bond in the sum of \$100,000.00 for the faithful performance of her trust.

3. That thereafter the said Gladys Lloyd entered upon the performance of her trust. That on June 5, 1956, she obtained an Order from this Court for the expenditure of \$1000.00 per month for the personal care of her ward. That although the said conservator failed to obtain permission of this Court to employ Attorney Russell Morris as counsel of the estate of the ward, the said conservator filed

in this cause her approval and consent to an attorney's fee to said Attorney Russell Morris in the sum of \$3,500.00, which said fee was disallowed in toto by Order of this Court dated June 11, 1956. That in furtherance of her design to pressure the estate of her ward the said conservator sought and obtained by order of court dated June 18, 1956, for herself, the sum of \$3,600.00, all of which was withdrawn from the estate of her ward as 48 weeks' of service rendered

2 her ward at \$75.00 per week. That with full knowledge of the Order of the Court dated June 11, 1956, denying attorney's fee to Attorney Russell Morris, the conservator permitted Attorney Robert Williams to perform services for herself and on behalf of the estate of her ward from May 14, 1956 through August 1956, without first obtaining authorization for same this Court. That thereafter on September, 1956, the said conservator filed a petition herein seeking authorization to employ counsel and an accountant and to pay Attorney Robert Williams \$1000.00 on account of services rendered. On October 12, 1956, Judge Pine denied the motion to employ counsel, granted \$150.00 per month for the employment of an accountant, and referred the demand of attorney's fee of Robert Williams Esquire, to the auditor to take testimony thereon.

4. That notwithstanding the fiduciary relationship existing between the conservator and her ward, and the responsibilities resting upon her by virtue of her appointment as conservator of the estate of her ward, the said conservator disregarded each and every of same, and did so completely coerced and through the position of her office as conservator procure a license on September 28, 1956, to marry her ward, and did cause said marriage to be consummated with her said ward, by Reverend Alphonso Joseph Edwards, on October 2, 1956.

5. That at the time of said marriage the said conservator well knew of the medical reports of Dr. John M. Evans, attached to the report of the guardian ad litem as exhibit No. 1 and the Report of Robert H. Groh, referred to in said guardian ad litem report as

exhibit No. 3. That said reports of said Doctors are made a part hereof by reference. That the conservator in the face of her duties and the mental and physical condition of her ward as revealed in the said medical reports, has committed a fraud upon this Court and thereby has violated the sacred trust reposed in her by Order of this Court dated
3 April 20, 1956.

6. That in addition to the foregoing and during her interview with the guardian ad litem prior to her appointment as conservator she stated to him that she was a married woman, 45 years of age, living separate and apart from her husband. That your petitioners allege that neither the conservator nor her ward was eligible to enter into the marital contract, by virtue of the physical and mental conditions of the ward, together with section 21-507 of the D. C. Code, Supplement IV, and the conservator because of a disability arising out of a subsisting marriage. That by reason of the foregoing the conservator has forfeited her right to continue as conservator of the estate of Theodore A. Matthews, ward. That by reason of the alleged marriage there is definitely a conflict of interest arising between the conservator and her ward. That by virtue of the alleged marriage the said conservator has imposed upon the estate of Theodore A. Matthews, ward, the legal obligation of a wife, without first seeking permission and authorization of this Court.

7. That your petitioners upon being informed of the pending marriage of the conservator to her ward, applied to this Court for injunctions and obtained a temporary restraining order dated October 5, 1956, enjoining said marriage. However the said conservator answered stating that the marriage was performed prior to the issuance of said restraining order, and as a result thereof, the restraining order was ineffectual.

8. That by consummating the alleged marriage with her ward, without leave of this Court, the said conservator has ingratiated herself in the estate of her ward, as follows: her ward becomes liable for

her debts, contracts or engagements which the wife may incur or enter into upon the credit of her ward, as provided under Section 30-211 of

4 the D. C. code, under Section 18-201 of the D. C. code she is given a dower right in all of the real estate of the ward and said real estate is valued over \$50,000.00, and she is awarded one half interest in the personal property of her ward, under Section 18-704 of the D. C. code, that there is more than \$100,000.00 in personal property.

9. That this court by virtue of the foregoing should enjoin the conservator from exercising any marital rights under the alleged marriage of October 2, 1956, should remove her from office as conservator and cause her to file an immediate account of her conservatorship.

WHEREFORE, the premises considered, your petitioners pray:

1. That process issue against the conservator, Gladys Lloyd Matthews.

2. That the said conservator be removed from office as conservator and a suitable person appointed in her stead.

3. That the said Gladys Lloyd Matthews, be enjoined and restrained from exercising any and all rights accruing from the alleged marriage to her ward under date of October 2, 1956 until further Order of this Court.

4. That the contract of marriage dated October 2, 1956, in which Theodore A. Matthews was a party, be declared void ab initio under Section 21-507 of the D. C. Code, Supplement IV.

5. That upon the removal of Gladys Lloyd Matthews, she be required to file an immediate account of her conservatorship.

6. And for such other and further relief apparent upon the face of the record and to the Court may seem just and proper.

/s/ Bernice M. Gordon

/s/ Philip M. Matthews

/s/ Carlisle E. Pratt

Attorney for Petitioners

[VERIFICATION]

6

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

District of Columbia

[Filed November 29, 1956]

I hereby certify and return that I served the annexed Petition on the therein-named Mrs. Gladys Lloyd Matthews by handing to and leaving a true and correct copy thereof with her personally at 813-21st N. W. in the said District at 8 p. m., on the 27th day of November, 1956.

/s/ Edgar J. McCloy

Deputy United States Marshal.

7

[Filed December 19, 1956]

ANSWER TO PETITION FOR REMOVAL OF CONSERVATOR,
FOR MANDATORY INJUNCTION, ACCOUNTING AND OTHER
RELIEF

Comes now, Gladys Lloyd Matthews and for her answer to petition filed herein states as follows:

1. That she denies that the petitioners are the niece and nephew of Theodore A. Matthews, ward, herein, they being the illegitimate children of Samuel Matthews, brother of the ward herein.

2. That she denies the allegations in paragraph (2) of the petition, which alleges that an Order was passed on April 20, 1956, appointing her conservation of the estate of the ward because of ward's mental weakness he was unable to manage his affairs, and states that the Court appointed respondent, as conservator, for the reason, that the ward was physically unable to properly manage his affairs. That at the time of her appointment the Court did not pass on the mental capacity of the ward, as the petitioners had expected at the time they filed the petition for appointment of a conservator for Theodore A. Matthews.

3. That, she admits an Order was entered on June 5, 1956

authorizing her, the conservator to expend \$1000.00 per month for the personal use and care of her ward, but denies that she ever employed the services of Attorney Russell Morris as counselor for the estate of the ward, and states that the services Attorney Russell Morris claimed he rendered were prior to her appointment as conservator, and she only consented to an attorney's fee for said Attorney Russell Morris, after being persuaded to do so by Attorney Morris. That at no time did

8 Attorney Morris render any services at the request of this conservator. That she admits she obtained for herself by Court Order the sum of \$3,600.00 for services she rendered the ward prior to her appointment, without compensation. That she denies further the allegation, that Judge Pine denied the motion to employ counsel, but to the contrary Judge Pine referred the matter of advance compensation for services rendered by Robert M. Williams, Attorney employed by the conservator for the period May 14, 1956 to September 1956 to the Auditor for report to the Court, said matter is still pending in the Auditor's office.

4. That, the conservator, denies the allegations in paragraph (4) and (5) of the petition and states that the matter contained in said paragraph is res adjudicata, Judge Matthews having dismissed motion for restraining Order in the petition to remove conservator, et cetera which was also filed and to be considered by the Court was dismissed by praecipe on the 15th day of October 1956.

5. That, the conservator states for her answer to paragraph (6) that neither she nor the ward were ineligible to enter, into the marital contract and that she has not forfeited her rights to continue as conservator of her ward's estate, but to the contrary she is in a better position to protect her ward's interest, against intruders.

6. That the conservator, admits the allegations contained in paragraph (7) as previously stated in this answer. (refer to paragraph (4)).

7. That, in answer to paragraph (8) the conservator states, that the allegations contained therein so far as her rights as the wife of Theodore A. Matthews are concerned are as a matter of law.

9 8. That, in answer to paragraph (9) the conservator states that she has done no act or acts that warrant her removal as conservator, by this Court.

WHEREFORE, the premises considered and having fully answered the petition filed herein, your conservator prays:

1. That the petition filed herein be dismissed by this Honorable Court with prejudice.

2. That, the petitioners be enjoined from filing any petitions against this conservator at any future date.

And for such other and further relief as the Court may seem just and proper.

/s/ Gladys Lloyd Matthews
Conservator

[JURAT]

/s/ Robert W. Williams
Attorney for conservator

10 [CERTIFICATE OF MAILING]

11 [Filed December 19, 1956]

DONALD McC. HARPER, MD
1915 New Hampshire Ave.,
N.W.
Washington, D.C.

December 15, 1956

To Whom It May Concern:

This is to certify that Mr. Theodore A. Matthews, 813-24th Street, N.W., Washington, D.C., has been under my professional care from August 8, 1955 to December 15, 1956, continuously, excepting for the

period he spent in George Washington Hospital, suffering from a cerebral hemorrhage. Mr. Matthews was discharged from George Washington Hospital on June 8, 1956, and since that date he has been under my professional care and has been seen approximately five times a week, every week.

Therapy is now directed to the restoration of the paralyzed limbs, and at this time, he is able to walk unassisted from one room to another. Chemo-therapy and psycho-therapy have so encouraged and reassured him that he is now quite oriented, has gained weight, and enjoys the ideal environment which is so necessary for his physical and mental well-being.

/s/ Donald McC. Harper, M.D.

[JURAT]

12

[Filed December 19, 1956]

MOTION TO DISMISS PETITION FOR REMOVAL OF
CONSERVATOR FOR MANDATORY INJUNCTION,
ACCOUNTING AND OTHER RELIEF

Comes now Gladys Lloyd Matthews, conservator of the estate of Theodore A. Matthews, by and through her attorney and moves this Honorable Court to dismiss the petition filed herein and for reasons states as follows:

1. That the petitioners have no standing before this Court they being the illegitimate children of Samuel Matthews, brother of the Ward.
2. That Samuel Matthews, brother of the Ward is the next of kin and he has not joined in the petition.
3. That, the Ward of his own free will entered into a marriage contract with conservator, Gladys Lloyd who was capable of entering

into said marriage on October 2, 1956.

4. That, the Ward was capable of entering into a marriage contract as evidenced by affidavit of Dr. Harper and made a part of this motion.

5. That, the conservator has done no act or acts that warrant her removal.

And for such other reasons that might be brought to the attention of the Court upon hearing of this motion.

/s/ Robert M. Williams

14 [Filed January 23, 1957]

REPLY TO MOTION TO DISMISS PETITION FOR REMOVAL
OF CONSERVATOR FOR MANDATORY INJUNCTION, ACCOUNTING
AND RELIEF

Come now the petitioners, Bernice M. Gordon and Phillip M. Matthews, by and through their attorney, Carlisle E. Pratt, and move the Court to deny the motion to dismiss herein and for reasons therefor state as follows:

1. Petitioners state that the allegations contained in Paragraph 1 of the motion to dismiss are unsupported by fact, and pray that Exhibits 1 through 9, inclusive, attached hereto, be incorporated herein and made a part hereof.

2. That for answer to the allegations of Paragraph 2, petitioners refer the Court to Civil Action 10-57 which is a petition for the appointment of conservatorship for Samuel Matthews. That the circumstances required an expedient filing of this petition, and Samuel Matthews is not qualified mentally or physically to proceed on his own behalf. That January 29 is the date set for the report of the Guardian Ad Litem in said captioned cause.

For further answer to Paragraph 2, petitioners state that this

petition was filed by them as the natural representatives of the said incompetent, Samuel Matthews, and as friends of the Court, the latter position upon the theory that a fraud having been perpetrated upon the Court any friend may bring the same to the attention of the Court.

3. The allegations of Paragraph 3 state a conclusion of fact inconsistent with verified allegations contained throughout this file and is a legal impossibility. Section 7 of the Act, and Section 21-507 of the D. C. Code, provides that all contracts of the ward are void,

15 except those for necessities. This is clearly an indication that the ward is barred, by statute, from entering into a contract of marriage during the existence of the conservatorship.

4. The allegation of Paragraph 4 is inconsistent with the other medical reports contained in this file and could not, as such, be the basis for a motion to dismiss.

5. For answer to Paragraph 5, petitioners state that the answer concludes as a matter of law and fact the question submitted to the Court and for further answer refers to the verified petition filed herein and prayed to be made a part hereof.

WHEREFORE, having fully answered, petitioners pray

1. That the motion to dismiss be denied.

2. That further proceedings in this cause be postponed for twenty days to permit the appointment, qualification, and substitution of the conservator of Samuel Matthews as a party to this cause.

3. For such other and further relief that the Court may deem proper at the time of the hearing of this motion.

/s/ Carlisle E. Pratt

Attorney for Petitioners.

[CERTIFICATE OF SERVICE]

[Filed January 23, 1957]

EXHIBIT 1

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Sadie Logan, of 1218 - 48th Street, N.E., Washington, D.C., being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for eighty (80) years; that for more than forty (40) years I have known Samuel Matthews; that I was a close friend of the family and visited the home frequently, as often as three times a week, to my personal knowledge, I know Samuel Matthews to be the father of Bernice Gordon, nee Matthews, and Philip Matthews; that at no time during this period of years has Samuel Matthews ever denied that he was the father of Bernice and Philip; affiant further states that Irene Matthews, mother of Bernice and Philip Matthews, was introduced to her by Mary Matthews, mother of Samuel Matthews, as his wife. Further affiant sayeth not.

/s/ Sadie Logan

[JURAT]

[Filed January 23, 1957]

EXHIBIT 2

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Goldena Lucas, being first duly sworn according to law on oath depose and say that I am a resident of the District of Columbia and have been such resident for all of my life; that I know Samuel Matthews and have known him for all of my life; that I know Irene Matthews to have been the wife of Samuel Matthews and that Samuel and Irene lived

together as husband and wife somewhere in the Southwest section of the City of Washington, D.C.; that I first met Irene Matthews at the home of Samuel Matthews' mother, Mary Matthews, 614 Fourth Street, S.W., and Irene was introduced to me by Samuel's mother as Samuel's wife, Mrs. Matthews; that on many subsequent visits to the home of Mary Matthews I saw Irene Matthews there in the home; that I know Samuel and Irene Matthews to be the mother and father of a daughter, Bernice, and a son, Philip, and I first saw both children when they were very young; that Samuel Matthews always acknowledged Bernice and Philip as his daughter and son and spoke of them many times to me in fatherly expressions; that Samuel always recognized Bernice and Philip as his children; that I was present at the marriage of Samuel's daughter, Bernice, which took place in the Zion Baptist Church in Washington, D.C. and was attended by thousands of persons and witnessed her father, Samuel, give his daughter in marriage; that I have known the brother of Samuel Matthews, Theodore Matthews, the sister of Samuel, Lottie Barnes, who reared her niece Bernice from about the age of two years, and they, too, always recognized Bernice and Philip as the children of their brother, Samuel, and always referred to them as their niece and nephew, that during the time that Samuel and Irene Matthews were husband and wife, I saw them on occasions together in the home of Samuel's mother.

/s/ Golden W. Lucas

[JURAT]

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Selene M. King, being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for

all of my life, that my father and mother before me were residents of the District of Columbia; that I have known Irene Bailey, nee Matthews, since at least the year 1918; that I met her as a member of Mt. Morish Baptist Church; that shortly after meeting Irene she left by church to go live, somewhere in Southwest, with Samuel Matthews as Mrs. Matthews; that it was always my impression that she was the lawful wife of Samuel Matthews; further, I have known Samuel Matthews, and Theodore Matthews for as far as I can remember and I was a distant cousin to the Matthews' family and a beneficiary in the Will of Lottie Barnes, sister of Samuel and Theodore Matthews; that I remember when Bernice Matthews was born to Samuel and Irene Matthews and held her in my arms when she was an infant; I well remember the birth of Philip Matthews to Samuel and Irene Matthews; Samuel and his entire family at all times and in all ways acknowledged Bernice and Philip as the children of Samuel and always gave the appearance that Irene was his wife.

/s/Selene M. King

[JURAT]

19 [Filed January 23, 1957]

EXHIBIT 4

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Rosa E. Roy, being first duly sworn according to law on oath depose and say that I was born in Washington, D.C. and have lived in said District of Columbia for all of my life; that I have known Samuel Matthews for over fifty years; that I knew Irene Bailey, nee Matthews, before her marriage to Samuel Matthews; that they did live together as husband and wife in the District of Columbia; that I know Bernice M.

Gordon, nee Matthews, to be the daughter of Samuel and Irene Matthews and I first saw the child when she was five months old; that I know Philip Matthews to be the son of Samuel and Irene Matthews and remember when he was born; that never to my knowledge has Samuel Matthews ever denied being the father of Bernice and Philip and he has always acted as a father and recognized them as his children; that as far as I know, he was a good provider, carried himself in a manly way and held himself out to everyone as the father of Bernice M. Gordon, nee Matthews, and Philip Matthews; that I have had many conversation with Samuel Matthew, in the presence of his mother, Mary Matthews, at which time he talked about his children and seemed proud of them as any father would.

/s/ Rosa E. Roy

[JURAT]

20

[Filed January 23, 1957]

EXHIBIT 5

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Mary Watts, being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for all of my life; that I have known Samuel Matthews for approximately fifty-eight (58) years. That I was personally well acquainted with the mother of Samuel Matthews, Mary Matthew, his sister, Lottie Barnes, and his brother, Theodore Matthews; that I know Samuel Matthews to be the father of Bernice M. Gordon, nee Matthews, and Philip M. Matthews; that Samuel Matthews has always conducted himself and acted as the father of Bernice and Philip; that as a next door neighbor to Samuel Matthews for a number of years, I have often heard him speak

of his daughter, Bernice, and his son, Philip, and I have observed them on many occasions when they visited their father.

/s/ Mary Watts
* * *

Subscribed and sworn to before me this 20th day of October, 1956.

/s/ Don Locket Young
Notary Public, D. C.

My commission expires March 31, 1957.

21 [Filed January 23, 1957]

EXHIBIT 6

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Hattie F. Greene, being first duly sworn according to law on oath depose and say, that I have been a resident of the District of Columbia for sixty (60) years, that I have known the Matthews' family for forty-five (45) years, that I am personally acquainted with Irene Matthews and her husband, Samuel Matthews, that they lived together as husband and wife at 342 B Street, S. W. in the District of Columbia; that Irene and Samuel Matthews had two children, Bernice Gordon, nee Matthews, and Philip Matthews; that both children were recognized by the whole community as the children of Samuel Matthews; that the sister of Samuel, Lottie Barnes, the mother of Samuel, Mary Matthews; and the brother of Samuel, Theodore A. Matthews, all recognized Bernice and Philip as the children of Samuel Matthews; that there has never at any time been a denial by Samuel Matthews that he was the father of Bernice and Philip; further, Lottie Barnes, the sister of Samuel Matthews, reared her niece, Bernice, from the age of fifteen months to adulthood, and always referred to her as the daughter of her brother, Samuel.

/s/ Hattie F. Greene

[JURAT]

[Filed January 23, 1957]

EXHIBIT 7

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Lavinia Garner of 336 K Street, S. W., being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for all of my life; that I was personally well acquainted with Mary Matthews, the mother of Samuel Matthews, for over fifty years; that I know Samuel Matthews to be the father of Bernice M. Gordon, nee Matthews, and I was informed that Samuel was the father of a son, whom I had never met; that I made frequent visits to the home of Mary Matthews and while there I saw Bernice, the daughter of Samuel Matthews, who was being reared by her grandmother, Mary Matthews and her aunt, the sister of Samuel Matthews, Lottie Barnes; I have never heard anything to the contrary of Samuel Matthews being the father of Bernice and Philip.

/s/ Lavinia Garner

[JURAT]

[Filed January 23, 1957]

EXHIBIT 8

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Ellen Dodson, being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for over thirty-five years; that for the past twenty-six years, I have been personally acquainted with Samuel Matthews; that I know Irene Matthews to have been the wife of Samuel Matthews; that I am personally well acquainted with Bernice Gordon, nee Matthews, and Philip Matthews

who are the son and daughter of Samuel and Irene Matthews; that in the years I have known the family there has never been any question as to Samuel Matthews being the father of Bernice and Philip; that I have been personally well acquainted with Theodore A. Matthews, the uncle of Bernice and Philip, Mary Matthews, the grandmother of Bernice and Philip and Lottie Barnes, the aunt of Bernice and Philip, who all recognized Bernice and Philip as the children of Samuel Matthews; that I have never heard and know of no one else who has ever heard that Samuel Matthews ever denied being the father of Bernice and Philip.

/s/ Ellen Dodson

[JURAT]

24 [Filed January 23, 1957]

EXHIBIT 9

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Mamie Gaines, of 817 - 48th Place, N. E., being first duly sworn according to law on oath depose and say that I have been a resident of the District of Columbia for sixty-five (65) years; that I have known the Matthews' family for fifty-eight (58) years, having been a very close friend of Lottie Barnes, the sister of Samuel Matthews; that I know of my own personal knowledge that Samuel Matthews is the father of a daughter, Bernice Gordon, nee Matthews, and a son, Philip Matthews; that in all of the years I have been associated with the family, I have never known Samuel Matthews to deny that he was the father of Bernice and Philip; that I know Irene Matthews and Samuel Matthews did live together as husband and wife in the District of Columbia; that Lottie Barnes, the sister of Samuel Matthews, reared

Bernice Gordon, nee Matthews, to my knowledge, from the age of two until adulthood and the date of her marriage; that Lottie Barnes always referred to Bernice Gordon, nee Matthews, as the daughter of her brother, Samuel.

/s/ Mamie Gaines

[JURAT]

25 [Filed January 29, 1957]

MEMORANDUM IN SUPPORT OF REPLY TO MOTION TO DISMISS

This cause came on for hearing upon the defendant's Motion to Dismiss the Petition for Removal of the Conservator. The facts briefly stated are:

On April 20, 1956 this honorable Court ordered the appointment of Gladys Lloyd as Conservator of the person and estate of Theodore A. Matthews; that said appointment arose from the Petition filed herein, the report of the Guardian Ad Litem, supporting Exhibits attached to said Guardian Ad Litem's report (including the report of the physician and psychiatrist). An excerpt from Exhibit #3, the report of Dr. Robert H. Groh (Psychiatrist) filed in this cause, set forth in part:

"It is my opinion that Mr. Matthews is of unsound mind due to cerebral vascular disease. He had a profound stroke affecting the entire left side of his jaw. He is disoriented and confused. He is unable, in my opinion, to exercise appropriate and proper judgment in his own behalf and welfare. There is serious doubt in my mind that the future holds much hope of improvement, and that he would ever be able to exercise reasonable judgment in his own behalf."
(emphasis added)

The approximate value of the real estate of the ward is in excess of \$50,000 and the personalty approximately \$100,000. Order was obtained by the Conservator, among other things, providing for \$1,000.00 a month for the care of the ward. That at the time of her appointment she had replied to the Guardian Ad Litem that she was married. The ward lived at 614 Fourth Street, S. W., Washington, D. C., and provisions were made for his nursing care. However, about a month after her appointment, the Conservator caused the ward to come and live with her at her address 813 - 21st Street, N. W. On or about the

26 first week in October, 1956, it was discovered that the Conservator had applied for license to marry the ward, and on or about the 5th of October, 1956 Judge Matthews of this Court issued an order temporarily restraining said proposed marriage. Upon presentation of affidavits that the marriage had already be consummated, and petitioners having no proof to the contrary, the Temporary Restraining Order was dismissed as being moot.

The Petition to Remove Conservator, etc., was filed by Bernice M. Gordon and Phillip Matthews. Bernice M. Gordon and Phillip Matthews, are the legitimate children of Samuel Matthews, Samuel Matthews having entered into a valid common-law marriage with Irene Matthews. Samuel Matthews, brother and next of kin of Theodore Matthews, being unable to act because of his own disability and application for the appointment of a Conservator for the person and estate of Samuel Matthews having been filed in this Court under Civil Action Number 10-57.

The Defendant filed her Motion to Dismiss supported by one Dr. Harper's (General Practitioner) affidavit to the effect that the ward is capable of making a competent decision in the premises. It is the intention of the petitioners that said affidavit does not satisfy the quantum of proof required by law under the circumstances.

ARGUMENT

I

1. The act for the appointment of conservators to conserve the assets and provide for the personal welfare of persons of advanced age, mental weakness, not amounting to unsoundness of mind, or physical incapacity, was passed by the Congress October 24, 1951, and is cited as 65 Statute 608, Public Law 196, Ch. 545, Oct. 24, 1951, and is found in Section 21-501 of the D. C. Code, 1951 Edition.

27 2. The purpose of the act is as stated in its subject heading. The Senate's report No. 171 of the 82nd Congress, 1st Session, considering Senate 11, as found in Serial No. 11486 of Senate Reports - Volume 1, states the purpose of the bill is to allow the Federal District Court for the District of Columbia to appoint conservators of the estate of the person who are incompetent by reason of advance age, mental weakness, or physical incapacity, properly to care for their property. House Report No. 631 and Conference Report No. 1026 corroborate the said purpose of the act.

3. Section 4 of the act states in part as follows: "The court shall have the same powers with respect to the property of any person for whom a conservator has been appointed as it has with respect to the property of infants under guardianship." Under the act, therefore, it is reasonable to assume that the law applicable to guardian and ward is applicable to conservator and ward under this statute. See *In re: Searle*, 118F. Supp. 273 (1953) D.C.D.C.

4. Legal history has shown that in no relation, except perhaps, parent and child or husband or wife, are the elements of confidence on one side and active good faith on the other more essential than in the relationship of guardian and ward. Guardianship is a trust of the highest and most sacred character, and the trustee cannot be allowed by law to have any inducement to neglect his ward's interests.

See Brandon v. Greer, 95 Miss. 100, 48 So. 519. The confidential relation immediately arises between a person appointed guardian and his ward, for the benefit of his ward. See U. S. F&G Co. v. Citizens State Bank, 36 N. D. 16, 161 N. W. 562. It is this type of relation that the conservator statute has created for the conservator and his ward.

II

- 28 5. Contracts between guardian and ward have been held void from time immemorial. See Daniels v. Tolson 530kla666, 157 P. 756, where the Court quoted two Pomeroy's Equitable jurisprudence Section 961 held:

"The equitable rules concerning dealings between guardian and ward are very stringent. The relationship is so intimate, the dependence so complete, the influence so great, that any transactions between the two parties, or by the guardian alone, through which the guardian obtains a benefit, entered into while the relationship exists, are in the highest degree suspicious; the presumption against them is so strong that it is hardly possible for them to be sustained. . . ."

6. Section 7 of the act, and Section 21-507 of the D. C. Code, provides that all contracts of the ward are void, except those for necessities. This is clearly an indication that the ward is barred by statute from entering into a contract of marriage during the existence of the conservatorship. Likewise, Section 30-103 of the D. C. Code makes voidable any marriage where "either of the parties to which shall be incapable from physical causes, of entering into the married state". There can be no question of the disparity of interest when the conservator marries the ward.

-MARRIAGE-

A person suffering from feeble mindedness may be incompetent to marry. See 55C.J.S. 823 12.

III

The validity or invalidity of the marriage is not the primary question. The primary question is the breach of fiduciary relationship

as grounds for removal from the office of conservator. Applying the law applicable to guardian and ward there can be no question of the existence of sufficient grounds to effect the removal of the conservator.

29 To dismiss this Petition summarily upon the defendant's motion would be to say that through her physician's affidavit she has rebutted the strong presumption of law that her acts were fraudulent and the affidavit of the physician (which conflicts with other medical opinions in this cause) would thereby be substituted for the judgment of the Court.

Respectfully submitted,

/s/ Carlisle E. Pratt
Attorney for Petitioners

* * *

[CERTIFICATE OF SERVICE]

30 [Filed January 31, 1957]

ORDER

UPON consideration of the Motion to Dismiss, Petition for Removal of Conservator for Mandatory Injunction, Accounting and Other Relief and upon argument of counsel it is by the Court this 31st day of January 1957

ORDERED that said Motion to Dismiss be and the same is hereby granted with prejudice.

/s/ [Illegible]
United States District Court Judge

[CERTIFICATE OF SERVICE]

Seen:

Carlisle E. Pratt

31 [Filed February 28, 1957]

NOTICE OF APPEAL

Notice is hereby given this 28th day of February, 1957, that Petitioners Bernice M. Gordon and Phillip M. Matthews hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31st day of January, 1957 in favor of Conservator, Gladys Lloyd Matthews against said Petitioners, Bernice M. Gordon and Phillip M. Matthews.

/s/ Carlisle E. Pratt
Attorney for Petitioners

[SERVICE]

BRIEF FOR APPELLEE AND SUPPLEMENTAL JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,795

BERNICE M. GORDON

and

PHILLIP MATTHEWS

(IN RE CONSERVATORSHIP OF THEODORE A. MATTHEWS)

ADULT WARD

Appellants

v.

GLADYS LLOYD MATTHEWS,

CONSERVATOR

Appellee

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**M. WILHELMINA JACKSON
1931 11th Street, N. W.
Washington, D. C.**

Attorney for Appellee

*United States Court of Appeals
District of Columbia Circuit*
FILED
JUL - 8 1957
Thiel W. Stewart
CLERK

(i)

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 13, 795

BERNICE M. GORDON
and
PHILLIP MATTHEWS
(IN RE CONSERVATORSHIP OF THEODORE A. MATTHEWS)
ADULT WARD

Appellants

v.

GLADYS LLOYD MATTHEWS,
CONSERVATOR

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE AND SUPPLEMENTAL JOINT APPENDIX

STATEMENT OF FACTS

This is an appeal from a judgment in favor of defendant entered in the United States District Court for the District of Columbia, January 31, 1957. The trial judge, the Honorable Matthew F. McGuire after consideration of a Motion to Dismiss Petition for Removal of Conservator granted defendant's Motion to Dismiss with prejudice.

The theory of the plaintiff's claim is that the conservator Gladys Lloyd Matthews, by virtue of her marriage to her ward, has breached her fiduciary relationship with him, committed a fraud on this Court and should be removed from her conservatorship and that the marriage is void and should be declared void ab initio as, if the marriage be valid, the conservator stands to gain by virtue of the alleged fraud she committed on the court: marrying her ward.

ARGUMENT AND AUTHORITIES

Point I

The questions as to whether the conservator breached her fiduciary relation by marriage to her ward and whether the marriage of the conservator to her ward should be declared null and void were submitted in arguments of counsel on verified Petition to Remove Conservator, verified Answer to Petition, and Motion to Dismiss Petition, with accompanying affidavits and the records in this case in support and the Order of the Court granting the Motion to Dismiss Petition to Remove Conservator, with prejudice, was just and well founded.

The questions raised on appeal are:

1. Did the Court err in granting motion to dismiss the petition without the production of evidence?
2. Did the Court err in summarily concluding without evidence the ward was competent to marry?
3. Did the guardian and/or conservator satisfy the quantum of proof required to rebut the presumption of fraud by producing a doctor's certificate stating the ward was oriented?

At the hearing on the Motion to Dismiss Petition, affidavits and the records in the case in support of said motion, were submitted. In the records there were three affidavits from, two long time friends of the ward, Wilhelmina Johnson and George M. Ransom, and the family preacher, Rev. A. J. Edwards filed in support of a previous Motion to Dismiss Petition to Enjoin the Marriage of the Conservator and her ward. (Appellee's App. 8). Each affiant was present at the marriage ceremony between the Conservator and the Ward and swore in their respective affidavits that from their observation of him during the ceremony he was well aware of his acts and his words and the meaning thereof in the ceremony. No affidavits were introduced contradicting the testimony of the three witnesses who stated they were present at the ceremony in the records of this cause. In a leading case on this subject, Roether v. Roether, 180 Wis. 24, 191 N. W. 576, 577, the court, in reversing the lower court's decision that the marriage of a ward declared to be mentally incompetent to manage his affairs was null and void, reasoning that although the defendant was found mentally incompetent to manage his affairs, and a condition once shown to have existed is presumed to continue, said

"...slight proof to the contrary will rebut the presumption..."

and quoting from Guardianship of Farr, 171 N. W. 951, 952

"...a man may be sane or competent at one time and insane or incompetent at another time...sanity and competence to manage an estate are not synonymous terms (sic)".

The Court then went on to apply those rules to the case before it in which testimony from five witnesses attested their friendship or knowledge of the ward and the fact that, although none of the five were present at the ceremony, his general behavior, and in one instance, a statement by him to one of the witnesses, indicated he knew what he was doing at the time. Accordingly, the decision was

reversed, the Court declaring that the mental state of defendant was far above the minimal required for a valid marriage. In the instant case, witnesses, whose observations recorded in affidavits are uncontradicted were present at the ceremony and all had known the ward for a number of years. Their affidavits were part of the records of this case which were submitted in support of the Motion to Dismiss. Further, in the present case, the ward was appointed a conservator due to his physical incapacity to manage his affairs by order of this court, April 20th, 1956. (Appellee's App. 1). We submit therefore that the court in acting to summarily conclude the ward's competency to marry, had before it sufficient and competent evidence.

To answer the question whether the conservator satisfied the quantum of proof required to rebut the presumption of fraud by producing a Doctor's certificate stating the ward was oriented: fraud is never presumed but must be established from clear and convincing evidence. In Public Motor Service, Inc. et al v. Standard Oil Co. of New Jersey, 69 App. D. C. 89, 91, the Court in discussing fraud stated,

"... it is settled... that fraud must be shown by clear and convincing evidence (citing cases) and by evidence which is not equivocal, that is, equally consistent with either honesty or deceit..."

In the instant case, the conservator married her ward and continues as his conservator which is in control of his property subject to the will of this court and accountable to the court. In the light of the fact that fraud is never presumed, we submit that the mere fact of her marriage to her ward raises no presumption, it merely creates a status that she is his wife, as well as his conservator. The cited cases and code sections on the inability of a ward to contract with his guardian found in the appellant's brief, in that such contracts are void,

are inapplicable. Marriage is not a civil contract within the meaning of those cases and our code sections. In Roether v. Roether, op. cit., p. 577, the Court held that,

"...it is true a marriage contract is a civil contract, but its essence is to define a status in society, rather than to regulate control over property..." (emphasis added)

Further the court observed p. 577, that the Court in other cases in construing the statute whereby contracts of a person under guardianship, after entry of the order shall be void, has said

"...its object and purpose seems to be to prevent an incompetent from disposing of his property, so as to place it out of his control and beyond his recall during the pendency of the guardianship proceedings..."

The court then went on to say

"...it was there held that a gift by Will did not come under the provisions of section 3979..." neither do we think a marriage contract comes within its provisions... It excludes a contract whose prime purpose is to define the personal status of the parties in society and especially must this be so where the Legislature has fully treated the restrictions on marriage in another chapter, where there is no such restrictions as section 3979 is claimed to impose..."

Applying that reasoning to the present case, Title 30, Sec. 103 of D. C. Code, 1951 Edition sets out certain marriages which can be declared a nullity after a decree and under the enumerated marriages there is no mention of marriages between guardian and ward or conservator and ward. At common law, persons under guardianship could marry. 28 C. J. 1097. In the case of Bradford v. Parker, 99 N. E. 2d 537, 538, the Court in answer to a claim that a person under conservatorship could not enter into a valid marriage said that

"...Guardians of minors have as complete control over the property of their wards as have conservators... but notwithstanding the marriage of a minor without consent of his guardian is not void..."

In that case, the appellants claimed that although the ward was not mentally incapacitated, his conservator has as full control over his property, contracts, and legal relations as if he had been insane... that marriage of the ward during conservatorship interfered with the conservator's control over the property and therefore was invalid. The court held the marriage valid under the above reasoning that marriage of a minor is valid. In the instant case the conservator married her ward, the conservatorship continuing. As his conservator she is under the surveillance of this court in so far as preservation and conservation of his property is concerned.

The evidence in this case was a Verified Petition to Remove the Conservator in which it was set out that the conservator coerced her ward to marry her with knowledge of the state of health of the ward and in spite of her allegation to guardian ad litem that she was a married woman; that the marriage to her ward created a conflict of interest between the conservator and ward, created a fraud on the court and committed a breach of fiduciary relationship. The evidence further consists of a Verified Answer to the Petition for Removal of Conservator in which it is set out that the conservator was appointed due to physical incapacity of the ward; that all expenditures made were on court authority; that she was eligible to marry as she was divorced and that the ward was eligible to marry as he was single. A Motion to Dismiss Petition was filed with affidavits in support thereof, the sworn Answer and the records in the case. Said affidavits are attached hereto. A Reply to this Motion was filed and upon consideration of arguments of Counsel and the affidavits, exhibits, and Report of the Guardian ad litem and the records of the case, referred to in argument of counsel, the Court acting through the Hon. Matthew F. McGuire presiding, granted the Motion to Dismiss with prejudice. (The memorandum filed January 29, 1957 and set out in the appendix as a part of the records in the Case for the appellants (appellants app. 18) was not part of the record in the hearing

on this cause as it was filed after the time prescribed by the Court for its submission).

POINT II

The cases and code sections cited by the appellants are all inapplicable to the instant case.

The code sections, viz: Tit. 21, sec. 503, and Sec. 507 and Tit. 30, Sec. 103, District of Columbia Code 1951 Edition are inapplicable to the case at bar as marriage creates a status and is not a contract within the meaning of Sec. 507, Tit. 21 and as marriages between guardian and ward are not illegal and void upon entry of a decree declaring their nullity in that they are not set out in Tit. 30, Sec. 103. The cases, citing the fact that contracts between guardian and ward are void, therefore the marriage of conservator and ward is void, are inapplicable as marriage is not a civil contract within the meaning of those cases, see Roether v. Roether, and Bradford v. Parker, op. cit. and as at Common Law a person under guardianship could marry. 28 C. J. 1097. The cases cited on the confidential relation of a guardian and ward which compels the court to examine transactions between them whereby the guardian obtains a benefit, with a strict and stringent yardstick, we feel, do not apply as marriage is not a transaction within that sense. It creates a status. In Bradford v. Parker, op. cit. the Court said

"... The property rights to support, dower, or to a share in the estate of a deceased spouse, although some of them may be affected by contract, arise automatically from the status and not from any contract, conveyance, or other act of the ward in the nature of dealing with his property. A conservator has no power over the person of his ward similar to that possessed by a guardian..." (emphasis added)

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Trial Court did not err in applying the law; and that there was sufficient and competent evidence to justify the Court in dismissing the Petition for Removal of Conservator on Motion to Dismiss, with prejudice; and the judgment of the Trial Court should be affirmed.

Respectfully submitted

M. WILHELMINA JACKSON
1931 11th Street, N. W.
Washington, D. C.

Attorney for Appellee

(i)

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SUPPLEMENTAL JOINT APPENDIX

35

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

IN RE: CONSERVATORSHIP OF)	
THEODORE A. MATTHEWS,)	Case No. 1107-56
ADULT WARD)	

[Filed April 20, 1956]

ORDER APPOINTING CONSERVATOR

This cause came on to be heard at this term of Court on the petition filed herein, to appoint a conservator for estate and welfare of Theodore A. Matthews, adult respondent, the answer of said respondent, the report of the guardian ad-litem, the argument of counsel for the petitioners and respondent; all parties concerned having consented in open Court to the appointment of Gladys Lloyd as conservator of the estate and welfare of the said Theodore A. Matthews, respondent, until such time as he is physically capable of managing his own affairs: it is this 20th day of April, 1956:

ORDERED, that Gladys Lloyd be and she is hereby appointed, conservator of the estate and personal welfare of Theodore A. Matthews, respondent, and to look after his business affairs until further order of this Court; provided she first furnish a satisfactory undertaking, or bond in the penal sum of one hundred thousand dollars (\$100,000.00) for the faithful performance of trust in her reposed.

/s/ James R. Kirkland
JUDGE

[Certificate of Mailing]

[Filed October 4, 1956]

PETITION TO ENJOIN PROPOSED
MARRIAGE OF CONSERVATOR TO RESPONDENT
AND TO REMOVE CONSERVATOR

Comes now Bernice M. Gordon, niece of Theodore A. Matthews, and Philip M. Matthews, nephew of Theodore A. Matthews, and represents to the Court the following:

That on April 20, 1956, this Honorable Court ordered the appointment of Gladys Lloyd as conservator of the person and estate of Theodore A. Matthews; that said appointment arose from the petition filed herein, the report of the Guardian Ad Litem, supporting exhibits attached to said Guardian Ad Litem's report (including the report of the physician and psychiatrist) an excerpt of Exhibit #3, the report of Robert H. Groh (Psychiatrist), filed in this cause, set forth in part:

"It is my opinion that Mr. Matthews is of unsound mind due to cerebral vascular disease. He had a profound stroke affecting the entire left side of his body. He is disoriented and confused. He is unable, in my opinion, to exercise appropriate and proper judgment in his own behalf and welfare. There is serious doubt in my mind that the future holds much hope of improvement and that he would ever be able to exercise reasonable judgment in his own behalf."

and it was the opinion of the Court that the said Theodore A. Matthews was incompetent to exercise sound judgment and to manage his own affairs.

Petitioners aver, that pursuant to said appointment, Gladys Lloyd caused bond to be issued and continued and still serves in the capacity of conservator; that notwithstanding the trust imposed upon her to conserve the assets of the estate and manage the personal affairs of Theodore A. Matthews, said conservator has applied for a license of marriage for Theodore A. Matthews and herself; that affiant Bernice M. Gordon, was informed by Gladys Lloyd that she intended

51 to marry Theodore A. Matthews at the earliest convenient date.

That a cursory examination of the record herein will readily disclose that Theodore A. Matthews is physically and mentally unable to enter into a marital relationship and further, that he is unable to comprehend, in his present mental state, the nature of the marriage contract.

That petitioners have caused the record herein to be examined and find that no leave of this Court has been sought for this proposed marriage nor has leave been sought to substitute a conservator.

Petitioners are informed and believe, and so believing, aver that the conservator in this cause has so used her appointment to render the said Theodore A. Matthews completely dependent upon her and completely vulnerable to her will; that said conservator planned matrimony from the inception of her contact and accepted said appointment, well knowing that her motives might well cause a conflict in her personal interests and the welfare of Theodore A. Matthews.

Petitioner further aver that their father, Samuel Matthews, is the nearest living relative and next of kin of Theodore A. Matthews; that the said Samuel Matthews is presently suffering from acute hypertension, a speech defect that renders him almost inaudible and he is approximately 95% blind and deaf and is severely handicapped in the management of his own affairs and unable to come forward at this time to protect the interests of his brother.

Petitioners believe that unless this Court enjoins this proposed marriage, the obvious conflict in the interests of the fiduciary of the estate will cause irreparable damage; that once this marriage is consummated, the will of the conservator will be so further imposed upon Theodore A. Matthews that great danger may result to his physical and mental being.

WHEREFORE, petitioners pray:

52 1. That a temporary restraining order and injunction issue from this Court enjoining the marriage of the conservator to Theodore A. Matthews, temporarily and permanently.

2. That a substitute conservator, free of personal designs for gain, be appointed.

3. For such other and further relief as to the Court may seem just and proper.

/s/ Bernice M. Gordon

/s/ Philip M. Matthews

/s/ Carlisle E. Pratt

* * *

Attorney for Petitioners

[JURAT]

53

NOTICE

To: Mrs. Gladys Lloyd
813 21st Street, N. W.
Washington, D. C.

The rules of this Court require that if you oppose the granting of this Petition, you or your counsel, shall within five (5) days from the date of service of a copy of this petition upon you, or such further time as the Court may grant or as the parties to this action may agree upon, file in reply with the Clerk of the Court, a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel herein.

/s/ Carlisle E. Pratt

* * *

Attorney for Petitioners

56

[Filed October 13, 1956]

ANSWER TO PETITION TO ENJOIN PROPOSED
MARRIAGE OF CONSERVATOR TO RESPONDENT
AND TO REMOVE CONSERVATOR.

Comes now, Gladys Lloyd, Conservator and for Answer to the petition against her filed October 4, 1956 states as follows:

1. That the finding of this Court based on the record herein was that Theodore A. Matthews was physically incapable of managing his

own affairs as is represented by the Order of Court issued the 20th day of April, 1956 stating that the appointment of conservator to be continued until such time as the adult ward is "physically" capable of managing his own affairs.

2. That your conservator's application for a marriage license to the adult ward was made at his request and upon his insistence as is shown by affidavits in support of Answer to Motion for Preliminary Injunction and Temporary Restraining Order said affidavits made part of this Answer by reference.

3. That the adult ward is completely aware of the nature of the marriage contract he entered into October 2, 1956 as is evidenced by the affidavits of his private physician Dr. Harper and his minister Rev. A. J. Edwards which are attached to the Answer to Motion for Preliminary Injunction, et cetera and made a part hereof by reference.

4. That your conservator who is now the wife of the ward intended to disclose the fact of this marriage to the Court and beg leave to be continued as conservator but this petition to have her removed and enjoin the marriage was filed in advance of such action on her part.

57 5. That your conservator denies the allegations of paragraph five (5) of this petition.

6. That your conservator neither admits nor denies the allegations of paragraph six (6) of this petition, but demands strict proof.

7. That your conservator and the adult ward were married three (3) days prior to the filing of this petition as is evidenced by the return of Rev. A. J. Edwards on file in the United States District Court, said return being made a part of this Answer by reference.

WHEREFORE, the premises considered, your petitioner prays:

1. That the Temporary Restraining Order issued be dissolved and the Motion for Preliminary Injunction and the Petition for Removal, et cetera be dismissed.

2. That she be continued as the Conservator of Theodore A. Matthews.

3. For such other and further relief as may seem just and proper.

/s/ Gladys Lloyd (Matthews)

[JURAT] [Certificate of Service]

58

[Filed October 13, 1956]

MOTION TO DISMISS TEMPORARY RESTRAINING
ORDER PRELIMINARY INJUNCTION AND PETI-
TION TO ENJOIN PROPOSED MARRIAGE OF
CONSERVATOR TO RESPONDENT AND TO RE-
MOVE CONSERVATOR

Comes now Gladys Lloyd (Matthews), conservator of Theodore A. Matthews, adult ward, and moves this Honorable Court to Dismiss Temporary Restraining Order filed herein on October 4, 1956 and in support of her motion states as follows:

1. That the acts sought to be restrained namely marriage of Gladys Lloyd to Theodore A. Matthews was consummated several days prior to issuance of Temporary Restraining Order and Preliminary Injunction.

2. That the act sought to be restrained (the marriage) was performed on October 2, 1956 and Temporary Restraining Order and Motion for Preliminary Injunction and Petition to Enjoin Proposed marriage of conservator to Respondent and to Remove Conservator was served on October 5, 1956.

And for such other and further reasons as may be brought to the attention of the Court.

/s/ Robert M. Williams

Attorney for Conservator

"Affidavits filed herewith and
Answer to Petition."

[Certificate Of Service]

59

[Filed October 13, 1956]

AFFIDAVIT IN SUPPORT OF MOTION
TO DISMISS

DISTRICT OF COLUMBIA, ss:

Gladys Lloyd, (Matthews), being first duly sworn according to law on her oath deposes and states that Theodore A. Matthews, has been

residing in my home 813-21st Street, N. W. in the District of Columbia since his discharge from George Washington University Hospital, June 8, 1956; that your affiant and Theodore A. Matthews have been intimate friends for a period of more than eight years, and your affiant has been a friend of the family for more than twenty years; that on September 25, 1956 Theodore A. Matthews told your affiant he had decided to marry her and requested your affiant to call Rev. Joseph A. Edwards, his pastor, which she did and Theodore A. Matthews talked with Rev. Edwards personally by telephone, in regard to said marriage, that at the request of Theodore A. Matthews your affiant did procure the marriage license on October 1, 1956 application having been made on September 26, 1956 and we were married on October 2, 1956 by Reverend Joseph A. Edwards, in the presence of Mrs. Wilhelmina Johnson, Mr. George Ransom, Mr. Frank Dancy and Mrs. Bernice Barnes; that subsequent to the marriage ceremony (October 5, 1956) your affiant was served with a paper writing captioned "Temporary Restraining Order" and attached thereto was a paper writing captioned "Motion For Preliminary Injunction". That at the time your affiant was served with these papers she and Theodore A. Matthews had been married three (3) days as evidenced by return filed with the marriage license bureau in the District Court for the District of Columbia. Your

60 affiant further states that Theodore A. Matthews was well aware of what he was doing and saying at the time of the marriage ceremonies and since we have been married.

/s/ Gladys Lloyd Matthews

[JURAT]

61

AFFIDAVIT

To Whom It May Concern:

This is to certify that I, A. Joseph Edwards, Pastor, of Zion Baptist Church, Washington, D. C., performed the marriage ceremony of Mr. Theodore Arnold Matthews and Mrs. Gladys Lloyd, the contracting parties appeared before me in person Tuesday October 2, 1956 at 813-21st Street, N. W. Washington, D. C., and at their request I performed the ceremony under authorization of D. C. Marriage License No. 406,386.

It is my opinion that at the time of the ceremony the contracting parties participated knowingly and willingly. Said marriage was performed in the presence of a few friends of the parties.

/s/ A. Joseph Edwards
3930 Bennings Road, N. E.

[JURAT]

62

A F F I D A V I T

Washington
District of Columbia, ss;

I, Wilhelmina L. Johnson, after first being duly sworn according to law, depose and state, that I have known Mr. Theodore A. Matthews and Mrs. Gladys Lloyd for a number of years and that I was present on October 2, 1956 in the home of Mrs. Gladys Lloyd 813-21st Street, N. W. and witnessed the marriage ceremony performed by Rev. A. Joseph Edwards, Pastor of Zion Baptist Church, this City. I further state that other friends were present at the time the marriage ceremony. I wish to state also that prior to October 2, 1956 Mr. Matthews stated to me that he was going to marry Mrs. Gladys Lloyd and that he had talked with his pastor, Rev. Edwards. At the time of the marriage ceremony Mr. Matthews, was rational, answering all the questions asked by Rev. Edwards, and received congratulations from those persons present.

/s/ Wilhelmina L. Johnson
512 Tea Street, N. W.

[JURAT]

63

A F F I D A V I T

Washington
District of Columbia, ss:

I, George M. Ransome, after being sworn according to law states as follows: That I have known Mr. Theodore A. Mathews and Mrs. Gladys Lloyd (Matthews) for a period of 30 and 25 years respectively, and have been in close contact with them for the past 15 years having been assistant in the Funeral Home as night man.

I state further that I was present on October 2, 1956 when Mr. Matthews and Mrs. Lloyd were married by Reverend A. J. Edwards, and at that time he was down stairs in the living room and was well aware of what he was doing and saying. That I am of the opinion from my close association with Mr. Matthews, that no one could influence him to do anything he did not want to do, therefore, he married Mrs. Lloyd of his own free will. I do know that Mrs. Lloyd, who is now Mrs. Matthews has been a faithful companion to Mr. Matthews caring for his needs when no one else would. Mr. Matthews has made wonderful progress since his discharge from George Washington University Hospital and Mrs. Gladys Lloyd Matthews has conducted his business in the Funeral Parlor the same as if he was there.

64 I do state further that Mrs. Gladys Lloyd Matthews is a fit and proper person to manage the Funeral Home and has and will do so for the best interest of Mr. Matthews.

/s/ George M. Ransome
1240 Quincy St., N. W.

[JURAT]
